

## MEMORANDUM OF LAW

DATE: September 24, 1993

TO: Hedy Griffiths, Employee Benefits Manager, Risk  
Management Department

FROM: City Attorney

SUBJECT: Distribution of Supplemental Pension Savings Plan  
Upon Death

Currently, the City's Supplemental Pension Savings Plan ("SPSP") requires that distributions of SPSP monies upon the death of an employee shall be paid to the participant's surviving spouse. You have asked if this is legally permissible.

George Ramos, Jr., a legal intern for this office, has prepared a response to your inquiry. In it Mr. Ramos indicates that California statutes and case law make clear that a spouse's interest in a pension or retirement plan is limited to the spouse's community property interest. We concur in this conclusion. The participant may, of course, opt to make the spouse a 100% beneficiary but is not required by law to do so.

The provisions of the SPSP Plan which require a spouse to be designated beneficiary were adopted to comply with the Retirement Equity Act ("REA") and the Deficit Reduction Act ("DEFRA"). REA and DEFRA amended the Employee Retirement Income Security Act ("ERISA"). As this office has frequently opined, (see the attached memoranda of law written by Assistant City Attorney John Kaheny, dated May 16, 1988 and October 15, 1985) SPSP, as a governmental plan, is exempt from the provisions of ERISA. See 29 U.S.C. sections 1003(b)(1), 1144(a). Since the City is not bound by ERISA provisions, we recommend that the SPSP Plan be amended to reflect the community property provisions of California law.

As now written, the Plan requires a participant to make a beneficiary designation not required by law. Additionally, there is an inherent unfairness in a provision that requires an employee to designate all of his or her SPSP monies to a current spouse especially if there has been a prior marriage. For example, if an employee is divorced and has children from that marriage, he or she may, upon remarriage, choose to designate the

children of the previous marriage as beneficiaries of his or her community property share of the SPSP proceeds. Using the same scenario, under California community property law, where an employee remarries all monies accrued in the SPSP Plan prior to the current marriage are the employee's alone. Only those monies accrued during the life of the current marriage are subject to community property division.

Prior to January 1, 1985, the SPSP Plan allowed an employee to designate a beneficiary of his or her choosing. We believe this is legally appropriate. As a practical matter, most employees will continue to designate his or her spouse as beneficiary. In those instances where the employee names another individual as beneficiary, the spouse will still receive his or her community property share of the monies.

If you have further questions, please call me.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:mrh:357(x043.2)

Attachments

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